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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS
FOR THE NORTHERN DISTRICT OF TEXAS AMARILLO DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
SEP 12 2007
CLERK, U.S. DISTRICT COURT
By Deputy

8 UNITED FOOD AND COMMERCIAL WORKERS
9 INTERNATIONAL UNION;
10 ROSA ARELLANO;
11 DELFINA ARIAS;
SONIA MENDOZA;
ROSALVA RODRIGUEZ;
CANDACE MICHELLE SVENNINGSSEN;
MICHAEL RAY GRAVES;
ALICIA RODRIGUEZ;
SERGIO B. RODRIGUEZ,

§ CIVIL ACTION NO.:
2-07CV-188-J

14 Plaintiffs,
15 v.
16 UNITED STATES DEPARTMENT OF HOMELAND SECURITY, MICHAEL CHERTOFF, SECRETARY;
17 UNITED STATES DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS
18 ENFORCEMENT, JULIE L. MYERS, ASSISTANT SECRETARY;
19 UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF
20 HOMELAND SECURITY;
21 JOHN AND JANE DOES 1-100,

22 Defendants.

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26 ORIGINAL COMPLAINT - CLASS ACTION
27 REQUEST FOR INJUNCTIVE AND DECLARTORY RELIEF AND DAMAGES
28 JURY DEMAND ON DAMAGE CLAIMS

1 I
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3 PRELIMINARY STATEMENT

4 1. This is a class action in which all plaintiffs seek declaratory and injunctive
5 relief compelling defendants the Secretary of U.S. Department of Homeland Security
6 and the United States Immigration and Customs Enforcement (sometimes hereinafter
7 referred to as "USICE") to comply with the Immigration and Nationality Act and the
8 First, Fourth and Fifth Amendments to the United States Constitution while
9 implementing work-place enforcement activities aimed at locating and deporting
10 undocumented immigrant workers. The named individual plaintiffs also seek
11 incidental damages for violations of their well-established Fourth Amendment right to
12 be free from unreasonable searches and seizures during USICE work-place enforcement
13 activities.

14
15 2. The manner in which defendants implement enforcement activities at work
sites not only flaunts Congress's will and the Fourth and Fifth Amendments to the
16 United States Constitution, it also unduly and unnecessarily disrupts the operation of
17 businesses and the work of union members throughout the United States.

19 II
20
21 JURISDICTION AND VENUE

22 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal
question jurisdiction). Declaratory judgment is sought pursuant to 28 U.S.C. §§ 2201-02.

23 4. Venue is properly in this district pursuant to 28 U.S.C. § 1331(b) and (e)(1), (2)
and (4), because some of the acts complained of occurred in this district, some of the
24 plaintiffs reside in this district, defendants have offices in this district, and no real
property is involved in this action.

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2 III
34 PARTIES
5

6 5. Plaintiff UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION
7 ("UFCW") was formed in 1979 as a merger between Retail Clerks International Union
8 and the Amalgamated Meat Cutters International Union. The UFCW currently
9 represents 1.3 million workers across the United States, Canada, and Puerto Rico in
10 industries including retail food, meatpacking and meat processing, and food
11 processing. UFCW's membership includes approximately 250,000 workers employed in
12 meatpacking plants. The UFCW's goals and programs seek to improve the lives and
13 working conditions of workers and their families and communities, and to protect the
14 legal rights of its members, particularly when they are at work. UFCW members and
15 potential members were detained without reasonable suspicion or probable cause to
16 believe that they were immigrants present in the United States in violation of the
17 Immigration and Nationality Act during the Swift Raids as more fully set forth below.
18 Additionally defendants denied UFCW members detained and/or arrested at all five of
19 the Swift plants access to UFCW attorneys or attorneys retained by the UFCW to
20 represent its members. The unlawful and unconstitutional manner in which defendants'
21 have implemented and continue to implement work-place enforcement actions violates
22 the rights of UFCW's members, interferes with the UFCW's goals and work and makes
23 the achievement of its goals substantially more difficult, time-consuming, and
24 expensive than would be the case if defendants conducted work-place enforcement
25 activities in a manner consistent with the Immigration and Nationality Act and the
26 United States Constitution. Defendants' unlawful enforcement activities divert the
27 limited resources of the UFCW and make its work and the achievement of its goals
28 more difficult and costly.

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1 6. Plaintiff DELFINA ARIAS is a citizen of the United States. She is a resident of
2 Cactus, Texas. She has worked at the Swift plant in Cactus, Texas for approximately five
3 years. She is a member of the UFCW, and has been a member for approximately five
4 years. On December 12, 2006, Immigration and Customs Enforcement agents, without
5 warrant or a reasonable suspicion based upon articulable facts that she was an
6 immigrant present in the United States in violation of the Immigration and Nationality
7 Act, or otherwise subject to seizure, detained plaintiff DELFINA ARIAS at the Swift plant
8 in Cactus, Texas for approximately four hours. At no time while she was detained was
9 she advised of her right to remain silent or right to counsel, or permitted access to
10 counsel.
11

12 7. Plaintiff ROSA ARELLANO is a citizen of the United States. She is a resident of
13 Dumas, Texas. She has worked at the Swift plant in Cactus, Texas for approximately 27
14 years. She has been a member of the UFCW for approximately 23 years, and a UFCW
15 steward for the last six years. On December 12, 2006, Immigration and Customs
16 Enforcement agents, without warrant or a reasonable suspicion based upon articulable
17 facts that she was an immigrant present in the United States in violation of the
18 Immigration and Nationality Act, or otherwise subject to seizure, detained plaintiff
19 ROSA ARELLANO at the Swift plant in Cactus, Texas for approximately four hours. At no
20 time while she was detained was she advised of her right to remain silent or right to
21 counsel, or permitted access to counsel.
22

23 8. Plaintiff SONIA MENDOZA is a citizen of the United States. She is a resident of
24 Dumas, Texas. She has worked at the Swift plant in Cactus, Texas for approximately 12
25 years. She is a member of the UFCW, and has been a member for approximately 12
26 years. On December 12, 2006, Immigration and Customs Enforcement agents, without
27 warrant or a reasonable suspicion based upon articulable facts that she was an
28 immigrant present in the United States in violation of the Immigration and Nationality
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1 Act, or otherwise subject to seizure, detained plaintiff SONIA MENDOZA at the Swift
2 plant in Cactus, Texas for approximately four and a half hours. During this time period
3 ICE agents searched plaintiff SONIA MENDOZA's person without warrant or other lawful
4 justification. At no time while she was detained was she advised of her right to remain
5 silent or right to counsel, or permitted access to counsel.

6 9. Plaintiff ROSALVA RODRIGUEZ is a lawful permanent resident of the United
7 States. She is a citizen and national of Mexico. She is a resident of Sunray, Texas. She
8 has worked at the Swift plant in Cactus, Texas for approximately 27 years. She has been
9 a member of the plaintiff UFCW for over three years. On December 12, 2006,
10 Immigration and Customs Enforcement agents, without warrant or a reasonable
11 suspicion based upon articulable facts that she was an immigrant present in the United
12 States in violation of the Immigration and Nationality Act, or otherwise subject to
13 seizure, detained Plaintiff ROSALVA RODRIGUEZ at the Swift plant in Cactus, Texas for
14 approximately four hours. During this time period ICE agents searched plaintiff
15 ROSALVA RODRIGUEZ's person without warrant or other lawful justification. At no time
16 while she was detained was she advised of her right to remain silent or right to counsel,
17 or permitted access to counsel.
18

19 10. Plaintiff CANDACE MICHELLE SVENNINGSSEN is a citizen of the United States.
20 She is a resident of Dumas, Texas. She has worked at the Swift plant for approximately
21 ten years. She is a member of the UFCW, and has been a union member for
22 approximately ten years. On December 12, 2006, Immigration and Customs
23 Enforcement agents, without warrant or a reasonable suspicion based upon articulable
24 facts that she was an immigrant present in the United States in violation of the
25 Immigration and Nationality Act, or otherwise subject to seizure, detained plaintiff
26 CANDACE MICHELLE SVENNINGSSEN for approximately three to four hours. During this
27 time period ICE agents searched plaintiff CANDACE MICHELLE SVENNINGSSEN's personal
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1 effects without warrant or other lawful justification. At no time while she was detained
2 was she advised of her right to remain silent or right to counsel, or permitted access to
3 counsel..

4 11. Plaintiff MICHAEL RAY GRAVES is a citizen of the United States. He is a
5 resident of Waterloo, Iowa. He has worked at the Swift meatpacking plant in
6 Marshalltown, Iowa for approximately 21 years. He has been a member of plaintiff the
7 UFCW union for over 20 years. On December 12, 2006, Immigration and Customs
8 Enforcement agents, without warrant or a reasonable suspicion based upon articulable
9 facts that he was an immigrant present in the United States in violation of the
10 Immigration and Nationality Act, or otherwise subject to seizure, detained Plaintiff
11 MICHAEL RAY GRAVES at the Swift plant in Marshalltown, Iowa for approximately eight
12 (8) hours. During this time period ICE Agents searched plaintiff MICHAEL RAY GRAVES'
13 person and personal effects without warrant or other lawful justification. ICE agents
14 also unlawfully physically restrained plaintiff MICHAEL RAY GRAVES. At no time while
15 he was detained or physically restrained was he advised of his right to remain silent or
16 right to counsel, or permitted access to counsel.
17

18 12. Plaintiff ALICIA RODRIGUEZ is a Lawful Permanent Resident of the United
19 States. She is a citizen and national of Mexico. She is a resident of Marshalltown, Iowa.
20 She has worked at the Swift plant in Marshalltown, Iowa for approximately five (5)
21 years. She has been a member of the UFCW union for approximately five (5) years. On
22 December 12, 2006, Immigration and Customs Enforcement agents, without warrant or
23 a reasonable suspicion based upon articulable facts that she was an immigrant present
24 in the United States in violation of the Immigration and Nationality Act, or had
25 committed a misdemeanour in their presence or a felony outside of their presence,
26 detained plaintiff ALICIA RODRIGUEZ at the Swift plant in Marshalltown, Iowa for
27 approximately six (6) hours. During this time period Plaintiff ALICIA RODRIGUEZ was
28

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1 unlawfully assaulted and battered by at least one ICE agent. At no time while she was
2 detained was she advised of her right to remain silent or right to counsel, or permitted
3 access to counsel.

4 13. Plaintiff SERGIO B. RODRIGUEZ is a lawful permanent resident of the United
5 States. He is a resident of Evans, Colorado. He has worked at the Swift meatpacking
6 plant in Greeley, Colorado for approximately 24 years. He is a member of the UFCW,
7 and has been a member for over 20 years. On December 12, 2006, Immigration and
8 Customs Enforcement agents, without warrant or a reasonable suspicion based upon
9 articulable facts that he was an immigrant present in the United States in violation of
10 the Immigration and Nationality Act, or otherwise subject to seizure, detained Plaintiff
11 SERGIO B. RODRIGUEZ at the Swift plant in Greeley, Colorado and then without warrant
12 or probable cause, arrested and transported him to a Denver detention center. Plaintiff
13 SERGIO B. RODRIGUEZ was unlawfully detained for approximately 12 hours. During the
14 time plaintiff SERGIO B. RODRIGUEZ was unlawfully detained and arrested by ICE
15 agents, his person and personal effects were searched without warrant or lawful cause.
16 At no time while he was detained was he advised of his right to remain silent or right to
17 counsel, or permitted access to counsel.

18 14. Defendant Michael CHERTOFF is the Secretary of the United States
19 Department of Homeland Security. Defendant CHERTOFF is charged with the
20 implementation of the Immigration and Nationality Act, 8 U.S.C. §§ 1101 *et seq.*, and
21 with the administration and oversight of the United States Immigration and Customs
22 Enforcement. He is sued in his official capacity.

23 15. Defendant Julie L. Myers is the Assistant Secretary of Homeland Security for
24 Immigration and Customs Enforcement, and as such is charged with the administration
25 and oversight of the United States Immigration and Customs Enforcement. She is sued
26 in her official capacity.

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16. Defendant UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT is a bureau of the U.S. Department of Homeland Security. USICE is charged with the lawful implementation of the Immigration and Nationality Act, 8 U.S.C. §§ 1101 *et seq.*, including with engaging in enforcement activities aimed to locating, arresting and removing immigrants present in the United States in violation of the Immigration and Nationality Act.

17. Defendants John and Jane Does 1-100 are officers, agents, and employees of the Department of Homeland Security who prior to and during the Swift Raids planned, authorized, encouraged, executed, or acquiesced in the violation of the individual named plaintiffs' well-established Fourth and Fifth Amendment rights as alleged throughout this Complaint. Their identities are presently unknown to the plaintiffs. This Complaint will be amended to add the names of John and Jane Does 1-100 when such identities become known to the plaintiffs. Defendants John and Jane Does 1-100 are sued for damages in their individual and official capacities.

IV

CLASS ALLEGATIONS

18. Plaintiffs bring this action for injunctive and declaratory relief on behalf of themselves and all other persons similarly situated pursuant to Fed.R.Civ.Proc. Rule 23(a) and 23(b)(2). Plaintiffs provisionally propose this action be certified on behalf of the following class:

All persons subjected to group detention without warrant or a reasonable suspicion based upon articulable facts that they are immigrants unlawfully present in the United States in violation of the Immigration and Nationality Act during work-place enforcement activities conducted by agents of the United States Immigration and Customs Enforcement.

1 19. Members of the proposed class likely number in the thousands and are so
2 numerous that joinder of all members is impracticable. The claims of the proposed class
3 representatives and those of the proposed class members raise common questions of
4 law and fact concerning, *inter alia*, whether defendants may detain workers without
5 warrant or reasonable suspicion that they are immigrants present in the United States in
6 violation of the Immigration and Nationality Act. These questions are common to the
7 named plaintiffs and to the members of the proposed class because Defendants have
8 acted and will continue to act on grounds generally applicable to both the named
9 plaintiffs and proposed class members. The claims of the UFCW's members and those
10 of the individual named plaintiffs are typical of the class claims. The plaintiffs will
11 adequately represent all members of the proposed class.

12 20. The prosecution of separate actions by individual members of the class would
13 create a risk of inconsistent or varying adjudications establishing incompatible
14 standards of conduct for defendants. Work-place enforcement by agents of the
15 Immigration and Customs Enforcement is a national function, not a function performed
16 differently in each individual case or in each USICE district or region. Prosecution of
17 separate actions would create the risk that individual class members will secure court
18 orders that would as a practical matter be dispositive of the claims of other class
19 members not named parties to this litigation, thereby substantially impeding the ability
20 of unrepresented class members to protect their interests.

21 21. Defendants, their agents, employees, and predecessors and successors in
22 office have acted or refused to act, and will continue to act or refuse to act, on grounds
23 generally applicable to the class, thereby making appropriate injunctive relief or
24 corresponding declaratory relief with respect to the class as a whole. Plaintiffs will
25 vigorously represent the interests of unnamed class members. All members of the
26 proposed class will benefit by the action brought by the plaintiffs. The interests of the
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1 plaintiffs and those of the proposed class members are identical. Plaintiffs are
2 represented *inter alia* by counsel associated with a non-profit public interest law firm
3 that includes attorneys highly experienced in federal class action litigation involving the
4 U.S. Constitution and the Immigration and Nationality Act.

5 V

6 FACTUAL ALLEGATIONS

7 22. Swift and Company ("Swift") is one of the largest meat producing companies
8 in the United States with some 15,000 employees. On December 12, 2006, six Swift
9 facilities located in Greeley, Colorado, Cactus, Texas, Grand Island, Nebraska, Hyrum,
10 Utah, Marshalltown, Iowa, and Worthington, Minnesota were raided by Immigration
11 and Customs Enforcement agents ("Swift Raids"). All of the plants had contracts with
12 the UFCW except for the plant in Hyrum, Utah.

14 23. Following the Swift Raids defendant Chertoff publicly announced that the
15 raids were conducted following "months of investigation ... targeted at [the] massive
16 use of document fraud to support illegal work in the workplace." Defendant Chertoff
17 asserted that this investigation disclosed "substantial evidence" that some Swift
18 workers "illegally assumed the identities of U.S. citizens," a crime under federal law.
19 Despite this purported prior knowledge of certain individuals who had allegedly
20 violated United States law, as alleged below, during the Swift Raids defendants
21 engaged in mass warrantless detentions of workers rather than focusing their
22 enforcement activities on those workers regarding whom they allegedly had prior
23 knowledge of illegal activity.

25 24. On information and belief, several thousand UFCW members were detained
26 during the Swift Raids, and administrative arrests totalled approximately 1,139, with
27 approximately 297 from Cactus, approximately 252 from Greeley, approximately 252
28 from Grand Island, approximately 239 from Worthington, and approximately 99 from

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1 Marshalltown. On information and belief approximately 150 workers were arrested for
 2 alleged crimes incident to immigration status, including approximately 53 workers at
 3 Cactus, approximately 21 at Greeley, approximately 26 at Grand Island, approximately
 4 20 at Worthington, and approximately 30 at Marshalltown. On information and belief
 5 approximately 65 of those arrested, were charged with criminal violations related to
 6 identity theft.

7 25. During the Swift Raids virtually all UFCW members at each Swift plant were
 8 detained as a group, told to remain in specific locations for interrogation, and were not
 9 free to leave those areas, regardless of their citizenship or immigration status, and
 10 without reasonable suspicion based upon articulable facts that they were immigrants
 11 present in the United States in violation of the Immigration and Nationality Act or
 12 otherwise subject to seizure

14 26. During the Swift Raids members of plaintiff the UFCW union had their
 15 person's and personal effects searched without warrant or other lawful justification.

16 27. During the Swift Raids UFCW members allegedly suspected of criminal
 17 conduct were not advised of their rights to remain silent or to counsel.

19 28. During and immediately following the Swift Raids defendants' agents barred
 20 lawyers associated with plaintiff UFCW from conferring with UFCW members detained
 21 by agents of the Immigration and Customs Enforcement.

22 29. During and following the Swift Raids UFCW members were detained
 23 without regard to the immediate need to provide care and custody for their minor
 24 children, including United States citizen children.

25 30. Following the Swift Raids defendants' agents coerced members of plaintiff
 26 UFCW into executing waivers of their statutory and constitutional right to a due
 27 process removal hearing. On information and belief defendants employed such
 28 coercion because they lacked sufficient detention space to hold UFCW members

pending removal hearings and sufficient Immigration Judges to process arrested UFCW members for formal removal hearings.

31. Defendants carried out the unlawful searches and seizures of UFCW members as alleged herein during the Swift Raids pursuant to custom, policy, practice and usage that defendants have followed, and unless and until enjoined by this Court, will continue to follow at dozens of work sites nationwide. Defendant Chertoff has publicly declared that such raids will continue to occur into the foreseeable future.

VI

IRREPARABLE INJURY

32. The UFCW and the named individual plaintiffs and those similarly situated are suffering and will continue to suffer irreparable injury unless this Court orders relief as prayed for herein. Such injury includes, *inter alia*, violation of their right to be free from unreasonable and unlawful detention and arrest in violation of the Fourth Amendment, and deprivation of due process and equal protection in violation of the Fifth Amendment. Damages cannot adequately address the injuries suffered by plaintiffs and their proposed class members.

VII

FIRST CAUSE OF ACTION

[Unlawful mass detentions]

33. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-32 above as though fully re-alleged here.

34. 8 U.S.C. § 1357(a)(1) permits USICE agents to interrogate, without detaining, any person reasonably believed to be an alien as to his right to be or to remain in the United States. Section 1357(a)(2) authorizes an USICE agent to arrest "any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any ... law or regulation and is likely to escape before a warrant can be

1 obtained for his arrest." The Fourth Amendment permits USICE agents to detain
2 persons for deportation only upon a reasonable suspicion based upon articulable facts
3 that the person is an immigrant present in the United States in violation of the
4 Immigration and Nationality Act. Defendants' policy and practice of engaging in mass
5 warrantless group detentions of all workers during work-place enforcement activities
6 without reasonable suspicion based upon articulable facts that such detained workers
7 are immigrants present in the United States in violation of the Immigration and
8 Nationality Act violate 8 U.S.C. § 1357 and the Fourth and Fifth Amendments to the
9 United States Constitution.

VIII

SECOND CAUSE OF ACTION

[Unlawful warrantless arrests]

14 35. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-32 above
15 as though fully re-alleged here.

36. 8 U.S.C. § 1226 provides that "on a warrant" issued by the Secretary of Homeland Security, an immigrant may be arrested and detained pending a decision on whether the immigrant is to be removed from the United States. 8 U.S.C. § 1357(a)(2) authorizes defendants to execute warrantless arrests only if they have "reason to believe that the alien so arrested is in the United States in violation of any such law or regulation *and is likely to escape before a warrant can be obtained for his arrest ...*" Defendants' policy, practice, custom and usage are to conduct warrantless arrests of plaintiffs and their proposed class members without any reason to believe they would escape before warrants could be obtained for their arrest. Defendants' policy and practice to arrest plaintiffs and their putative class members without warrants and without determining whether the individuals arrested are likely to flee before warrants

1 can be obtained are violative of the Immigration and Nationality Act, 8 U.S.C. §§ 1226
 2 and 1357(a)(2), and the Fourth and Fifth Amendments to the United States Constitution.

3 IX

4 THIRD CAUSE OF ACTION

5 [Failure to take into account the care of UFCW's members' children]

6 37. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-32 above
 7 as though fully re-alleged here.

8 38. During the Swift Raids defendants' agents detained and arrested members of
 9 plaintiff the UFCW without regard to children of such members who required the care
 10 and custody of a responsible adult. Defendants' actions in this regard violated
 11 defendants' internal policies and the due process guarantee of the Fifth Amendment of
 12 the United States Constitution.

13 X

14 FOURTH CAUSE OF ACTION

15 [UNLAWFUL DENIAL OF ACCESS TO COUNSEL]

16 39. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-32 above
 17 as though fully re-alleged here.

18 40. Defendants' policy, practice, custom and usage is to deny persons detained
 19 during work place raids reasonably prompt access to attorneys who are willing and
 20 available to advise and / or represent them. Said policy, practice, custom and usage
 21 violate the First and Fifth Amendments to the United States Constitution.

22 XI

23 FIFTH CAUSE OF ACTION

24 [FOR DAMAGES UNDER BIVENS]

25 41. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-32 above
 26 as though fully re-alleged here.

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42. The actions of defendants as described throughout this Complaint violated the well-established Fourth Amendment rights of the named individual plaintiffs to be free from unreasonable searches and seizures and the individual named plaintiffs therefore seek damages in an amount to be proven at trial from defendants John and Jane Does 1-100 pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). Pursuant to the Seventh Amendment the individual named plaintiffs demand a civil jury trial on their *Bivens* claim for damages.

XII

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court —

1. Assume jurisdiction over this action;
2. Certify this action as a class action pursuant to Rule 23(b)(2), Fed.R.Civ.Proc.;
3. Declare that defendants' policies, procedures, and practices as alleged

throughout this Complaint violate the Immigration and Nationality Act and the Fourth Amendment and the due process clause and equal protection guarantee of the Fifth Amendment to the United States Constitution;

4. Issue injunctive relief requiring that defendants, their agents, employees, and successors in office comply with the Immigration and Nationality Act and the Fourth Amendment and the due process clause and equal protection guarantee of the Fifth Amendment to the United States Constitution when engaged in work-place enforcement activities;

5. Grant the individual named plaintiffs a civil jury trial on their damage claims;

6. Award Plaintiffs costs of suit and attorney's fees reasonably incurred as a result of this lawsuit; and

1 / 1

1 7. Grant such further relief as the Court may deem just and proper.

2 Dated: September 11, 2007 Respectfully submitted,

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